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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,094	09/03/2004	Fabrizio Alessandro Maspero	1032553-000062	8971
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EXAMINER ELLIS, SUEZZU Y				
ART UNIT 2876		PAPER NUMBER		
NOTIFICATION DATE 03/17/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/507,094

**Applicant(s)**

MASPERO ET AL.

**Examiner**

Suez Ellis

**Art Unit**

2876

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 02 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:  
a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
b) ☐ They raise the issue of new matter (see NOTE below);  
c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 14-43.  
Claim(s) withdrawn from consideration: 44-63.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Continuation of 3. NOTE: The amendment to the claims requires further search and/or consideration.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments regarding the claims 14-43 are not persuasive.

With respect to applicant's argument regarding "a major portion of the surface area of the granules is coated with at least one layer of polymer" has written descriptive support in the specification, examiner respectfully disagrees. Though applicant's specification discusses the uses of a polymer coating for the granules, there does not appear to be any support for the claim limitation of "a major portion", and specifically, "a major portion of the surface area of said granules being coated". It is noted that the specification fails to provide any support for the granules being partly coated, which is implied by the above claim limitation. Further, there is no distinction made in the specification with regard to whether the "major portion" refers to number of granules or surface area of granules.

With respect to claim 14, applicant argues that Lin et al, nor Johnson teach a major portion of the surface area of the granules is coated with at least one layer of polymer. Examiner respectfully disagrees. The term "major portion" is a relative term. According to the Merriam Webster Dictionary Online, the term "major" means considerable. Since Lin et al. teaches "the binder is mixed with hydroxylapatite particles and the components are thoroughly combined", examiner considers a major portion of the surface area of the granules (particles) are coated with the polymer (binder) (see col. 5, lines 53-68). Johnson teaches a polymer coating is applied to granules (beads) wherein the coating that is applied to the beads is substantially continuous (col. 5, lines 37-52; 6, lines 1-2). Therefore, a major portion of the surface area of the granules is considered to be coated with a polymer. Further, in response to applicant's argument that due to the functional differences between Ricci et al. and Lin et al./Johnson, it would not have been obvious to employ the polymer thicknesses and amounts disclosed by Ricci et al. in connection with the Lin et al./Johnson polymer, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See Ex parte Obiaya, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Examiner notes Applicant argues that the polymer disclosed by Johnson is for permitting the beads to flow past each other readily. Examiner directs applicant to col. 6, lines 51-53, which discloses the coated beads, when packed together, tend to stick together, thus are considered to be fused together.

Therefore, the final rejection mailed on October 31, 2008 is maintained.

/S. E./  
Examiner, Art Unit 2876

/MP WOODWARD/  
Supervisory Patent Examiner, Art Unit 1615